

# Primum

"Primum non nocere"

*Arizona Medical Board and Arizona Regulatory Board of Physician Assistants*

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## Primum Focuses on Medical Practice Act, by Roger Downey

The reaction to Primum from physicians and physician assistants has been overwhelmingly positive. Most have told us they like the online publication because it saves money and trees; they also like the articles and the easy accessibility.

Besides the articles in this issue on the statutes that regulate the practice of medicine in Arizona, Medical Board Consultant Kelly Sems, M.D., goes over the elements of what should be in a patient's medical records.

Legible documentation may help resolve cases against physicians. Inadequate patient records, however, often compound a problem.

This issue will walk through the complaint process in the event a complaint is filed against you.

In other important news, the Boards have made some changes to the license application forms that many physicians and physician assistants will encounter for the first time when they submit their renewals.

Also in this issue, first-person accounts from a physician member of the Arizona Medical Board who volunteers his time at a small clinic in Honduras as part of Clinica Esperanza, and a physician who explains why it is important to review cases as an Outside Medical Consultant.

*Roger Downey is the Media Relations Officer for the Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants.*



The theme of this issue of Primum is the Medical Practice Act.



## The Physician and the Law, by Robert P. Goldfarb, M.D., FACS

When contacted by the Board Physicians often respond that they are unaware of the State's Medical Practice Act under which the Board licenses allopathic physicians granting them the privilege to practice medicine in Arizona. Therefore, I would like to briefly review some elements of the Act with you since the Medical Practice Act provides the grounds for the

Board to regulate physicians.

The Medical Board is entrusted by the Legislature to enforce the Medical Practice Act to protect the public from the improper, unethical, unlawful and incompetent practice of medicine. Each act of unprofessional conduct is cause for disciplinary action by the Medical Board. Since unfamiliarity with provi-

sions of the Act is not considered an accepted defense to a violation of the Act, I recommend that you carefully review the Medical Practice Act (A.R.S. § 32-1401, et seq.) with particular attention to paragraph 27 of 32-1401, which defines Unprofessional Conduct under the Act. You may review the Act on the

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## The Physician and the Law, continued

(Continued from page 1)

Board's website. The linked Act will be updated on September 21, 2006 – the effective date of this year's amendments. Some of the common violations are briefly summarized below, but I refer you to the Act for the complete description of these and other violations:

*“All complaints regarding physician conduct...are carefully investigated by medical investigators and medical consultants for the Board.”*

(h) prescribing or dispensing controlled substances to members of the physicians immediate family...

(t) knowingly making any false or fraudulent statement in connection with the practice of medicine if applying for privileges or renewing an application at a health care institution...

(w) charging a clearly excessive fee...

(dd) failing to furnish information in a timely manner to the Board...

(hh) prescribing or administering anabolic-androgenic steroids other than for therapeutic purposes...

(ii) lack of or inappropriate direction or supervision of a medical assistant...

(ss) prescribing, dispensing or furnishing a prescription medication unless licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship...(This

includes physicians reviewing on-line questionnaires and prescribing medications without performing the standard physical examination required for a doctor-patient relationship).

Changes in other laws applicable to the practice of medicine passed by the Arizona State Legislature this year make it an act of unprofessional conduct for a “Health Professional,” including a physician, to request a laboratory that provides Anatomic Pathology services (cytology, pathology, hematopathology, histopathology, surgical pathology and blood banking services) at the “Health Professional’s” orders to submit a bill to the “Health Professional.” Essentially this precludes the laboratory from billing the physician and the physician then billing the patient for the laboratory services.

The Legislature also passed a statute making it unprofessional conduct for a “Health Professional,” including a physician, to fail to have a written protocol for secure storage, transfer and access of the patients’ medical records when a physician terminates or sells his/her practice and the medical records do not remain in the same physical location. The written protocol must address how the “Health Professional” intends to allow requests from patients for copies of their

record or to access their medical records.

All complaints regarding physician conduct made to the Board by members of the public, hospitals, or other physicians are carefully investigated by medical investigators and medical consultants for the Board and are dismissed if the facts do not support a violation of the Medical Practice Act. However, if the facts support a violation of the Act, the matter is referred to the Board, consisting of 8 physician members and 4 public members, for adjudication. The Board’s deliberations are conducted in Open Session.

I urge you to review the Medical Practice Act, including the recent changes, to avoid preventable violations of the Act and possible disciplinary action by the Board.

*Dr. Goldfarb is the Chair of the Arizona Medical Board. He is Board-certified in neurological surgery and practices in a Tucson Neurosurgery-Neurology specialty group.*

*This article reflects the views of the author. Unless noted, it does not necessarily reflect the views of the Arizona Medical Board or any other Member of the Arizona Medical Board.*

## The Physician Assistant Practice Act, by Albert Ray Tuttle, P.A.-C

The Physician Assistant Practice Act (ARS 32-2501, *et seq.*) has been one of the leading practice acts in the country for many years, however, each quarterly meeting of the Arizona Regulatory Board of Physician Assistants (Board) considers the fate of PAs who fail to follow the statutes or rules.

When a PA completes an application for licensure in the State of Arizona, both the PA and supervising physician must sign a state-

ment swearing they have read and understand the practice act.

Ignorance of the law is no excuse, and these regulations are available on the Web site. They are also contained in the Medical Directory and Resource Handbook sent to all PAs in the state. If you have not done so yet, take the time to read and review these statutes and rules.

In order to help PAs avoid the

pitfalls in practice that commonly come to the Board’s attention, I would like to address some of those complaints.

1.) **Impairment including substance abuse.** The impaired practitioner is a potential danger to the public. Help is available. When the PA recognizes a problem exists, and self-

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## The Medical Practice Act, by Timothy C. Miller, J.D.

The agency regulating medical doctors was formed 103 years ago when Alexander O. Brodie, Governor of the then-Territory of Arizona, approved an act of legislative assembly called, "An Act to Regulate the Practice of Medicine." This act created the Arizona Board of Medical Examiners nine years before Arizona became a state. In 2002, State lawmakers changed the name of the agency to the "Arizona Medical Board."

The Arizona Legislature formalized creation of the agency in A.R.S. § 32-1401, et seq, which can be found on the Arizona Medical Board Web site at <http://www.azmd.gov/>. This act is referred to as the Medical Practice Act (MPA). The MPA charges the Board to protect the public through the licensing and regulating allopathic physicians. Besides establishing the Arizona Medical Board, the MPA sets licensing standards and regulation requirements. The Board must apply these standards and enforce these regulations.

When the Board receives a complaint alleging an allopathic physician violated the MPA, the Board must investigate the complaint. Any violation of the MPA is unprofessional conduct. If the Board substantiates a violation of the MPA, the Board may take disciplinary action against the offending physician. Because even a minor or an unwitting

violation may result in discipline it is important that all physicians become familiar with the requirements of the MPA.

This issue of *Primum* focuses on the MPA and provides important information to physicians. A complete listing of all the possible acts of unprofessional conduct as defined in the MPA is not possible for this newsletter. We can, however, categorize and summarize the types of acts that constitute unprofessional conduct.

The MPA makes violations of other state and federal laws an act of unprofessional conduct. All felonies and misdemeanors involving moral turpitude or involving the practice of medicine are violations of the MPA. Likewise, disciplinary action taken by another Board or state or Federal agency may constitute unprofessional conduct. An example of such action is when a physician loses the ability to participate in the Medicaid or Medicare programs.

The MPA contains numerous prohibitions against fraudulent or deceptive behavior. Included in the definitions of unprofessional conduct are: deceptive advertising; representing an incurable disease can be cured through some secret treatment; making false statements in connection with the practice of medicine or when applying for privileges or credentials; charging an inappropriate or illegal fee; obtaining or attempting to obtain a license by fraud; and

claiming to be a specialist or "board certified" when not.

One of the more common violations of the MPA has to do with medical records. Failure to maintain complete and legible records often leads to a number of problems including a violation of the MPA. In addition, failure to maintain or release medical records to patients frequently results in violations of the MPA.

Several rules apply to prescribing medication. The MPA prohibits a doctor from self-prescribing controlled substances or prescribing such substances to the physician's immediate family members. A physician may not sign blank, undated or predated prescriptions. In addition, failing to establish a physician-patient relationship prior to writing a prescription violates the MPA.

Quality of care issues generate the most complaints investigated by the Board. The MPA provides that gross malpractice, repeated malpractice, malpractice resulting in death, gross negligence, repeated negligence, negligence resulting in death, or any conduct that is or might be harmful or dangerous to the health of the patient or the public are unprofessional conduct. All malpractice judgments and settlements must be reported to the Board for investigation.

A physician's relationship with

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*"Any violation of the MPA is unprofessional conduct."*

## Have You Moved or Changed Your Phone Number(s)?

Notifying the applicable Board needs to be on the checklist when a physician or physician's assistant moves to a new residence or office or changes phone numbers.

"The Board may assess the costs incurred by the Board in

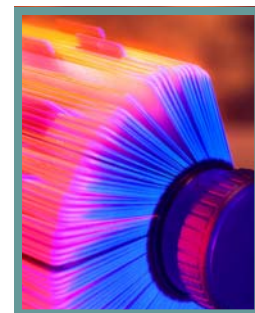
locating a licensee and in addition a penalty of not to exceed one hundred dollars against a license who fails to comply within 30 days from the date of change."

Physicians—A.R.S. § 32-1435

(A) and (B).

Physician Assistants—A.R.S. § 32-2527 (A) and (B).

Also, it is an act of unprofessional conduct not to inform the Board of an address change.



## Are Your Medical Records Adequate?, by Kelly Sems, M.D.

The Medical Record can be viewed as our best friend or our worst enemy. It is our best friend reminding us of our past encounters with our patients and plans of care guiding us through the land mines of diagnosis and treatment. After a long crazy day in the office or at the hospital the medical record turns on us demanding to be finished and completed when we are exhausted and can't take one more minute of the confines of our job. Either way, the medical record must be respected and adequate.

Having inadequate medical records is a fairly common reason for a physician or physician assistant to receive attention from the Arizona Medical Board (Board) or the Arizona Regulatory Board of Physician Assistants. A.R.S. § 32-1401(27)(e) and 32-2501(21)(p) mandate that a physician and physician assistant, respectively, maintain adequate records on a patient. At the last three Board regular session meetings, 17% of physicians received either non-disciplinary advisory letters or formal discipline for inadequate medical records.

If one hundred physicians were asked to define what an adequate medical record contains, there would likely be one hundred varied answers with some common threads. As defined by statute, an adequate medical record is a record that contains sufficient information allowing a fellow practitioner to

pick up the record and provide continuity of care to that patient at any point in the course of treatment. A.R.S. § 32-1401(2) and 32-2501(2). Other key components of an adequate medical record are as follows:

An adequate medical record is a legible medical record.

If you have hand written everything down, but no one can read what it says, the record is inadequate. Writing the office note in short hand and using abbreviations may seem clear at the time, but may be difficult to recall when reviewing the record later and impossible for another practitioner to decipher.

The adequate medical record contains patient identifying information.

Each page of the record contains information such as the name and birth date of the patient.

An adequate medical record contains a medical history, physical exam, laboratory and x-ray results to support the diagnosis and justify the treatment.

Documenting that a patient reports they have a certain diagnosis and treating the patient based only on the patient's statement is inadequate. Without appropriate objective supporting data such as an exam, lab, x-ray or past medical records the patient may experience harm and the practitioner may receive unwanted attention from the Board.

An accurate documentation of the

results of any treatment or intervention is also important. Making an intervention and treating the patient without follow up and documenting the outcome is inadequate. Periodic review of the patient's progress is important.

Indications of advice, cautionary warnings and informed consent provided to the patient should be documented.

Most physicians talk to their patients about potential side effects and concerns of medications and procedures. The documentation does not require every detail of the discussion but there should be at least a note that the discussion occurred.

Adequate medical records also contain the medications provided (including the date it was provided, type, dosage and quantity prescribed).

Excellent documentation results in far fewer interactions with the Board on quality of care issues because the physician's thought process is clear to those reviewing the record.

*Kelly Sems, M.D., is a Medical Consultant for the Arizona Medical Board. She is Board-certified in Internal Medicine and in Rheumatology.*

*This article reflects the views of the author. Unless noted, it does not necessarily reflect the views of the Arizona Medical Board.*



*"If you have hand-written everything down, but no one can read what it says, the record is inadequate."*

## Bad Handwriting May Be Loaded 'Gub,' by Roger Downey

In the 1969 film, "Take the Money and Run," Woody Allen plays a pathetic bank robber who wastes time arguing with a teller about his handwriting in a hold-up note. "I have a gub," the teller reads aloud. Allen says, "No, that's gun. I have a gun." But the teller insists, "It looks like gub."

The Seattle Post-Intelligencer reports a new law is now in effect in Washington State prohibiting cursive writing for prescriptions. Since June of this year, pharmacists may not fill a prescription there if it isn't hand-printed, typed or electronically generated.

Legibility has forced pharmacists

to make phone calls to get help in interpreting physicians' intent anytime there was the potential for error.

A random sampling of 6,000 prescriptions showed that between 24- and 32-percent could not be read because of



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## Volunteers Are Needed to Help the AMB, by Edward Krufky, M.D.

**Note:** Physicians who review cases for the Arizona Medical Board as Outside Medical Consultants receive CME credit.

**The Board has a serious need for Outside Medical Consultants in the following specialties:**

**Pulmonology**

**Dermatology**

**Plastic Surgery**

The Arizona Medical Board needs physicians to volunteer as Outside Medical Consultants (OMC). The OMCs render a great service to the medical community and to the people of the State of Arizona.

I have been an Outside Medical Consultant in radiology for the Arizona Medical Board (Board) for over 2 years. I felt very honored to be asked (and continue to feel that way) and believed that it was an opportunity to give back to the larger community. In the time I have served, the cases I have reviewed have helped me gain valuable insight into the types of complaints patients and others file with the Board. I have learned much about the functioning of the Board. I have learned that the Board does not have an easy job.

I have also learned that radiologists must word their reports with clarity, using plain and simple language so that

referring physicians, their patients, and others will have no misunderstanding regarding the radiologist's interpretations. I have learned that patient complaints can arise due to a misunderstanding of our jargon, a situation that can be avoided.

The OMC's evaluation of every case must be objective and based on the facts presented.

I won't kid you into thinking that being an OMC is easy. The cases can be difficult and complicated and each one takes time to evaluate. Your help is needed and appreciated as the number of OMC's presently available is quite limited in a number of specialties. A shortage of physicians offering their services can delay resolution of a case. An OMC can provide a valuable service to the medical community and the Board by helping resolve an issue against a colleague.

The people who work for the Board are great people who will do everything they can to make your case evaluations as easy as possible. They have provided me with excellent support and encouragement over the years and I'm sure will do the same for you.

Come on; give it a try. You may feel as I do, that you are honored to be in a position to provide a service to the State of Arizona and to our colleagues.

If you would like to participate as an Outside Medical Consultant please call Caroline Grinere at the Arizona Medical Board at 480-551-2757.

*Dr. Edward Krufky is Board-certified in Diagnostic Radiology. This article reflects the views of the author. Unless noted, it does not necessarily reflect the views of the Arizona Medical Board.*

## The Physician Assistant Practice Act , continued

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reports to the Board, it is possible to receive the help needed in a confidential manner. The Board has a structured program that helps the PA and protects the public. It is much better for the PA to self-report and seek care than to have a problem come to the attention of the Board through a complaint.

2.) **Inappropriate prescribing.** It is unprofessional conduct to prescribe anything without first establishing a professional relationship. This includes, among other things, establishing an adequate record, taking appropriate history, and performing a physical exam.

3.) **Negligence or malpractice.** All settlements and judgments

are required by law to be reported to the Board, and they are investigated.

4.) **False or incomplete information on an application for license.** The key to avoiding problems that may surface at a later date is to be complete and forthcoming when answering statements on the application. The general practice of the Board has been to deny the application of any one who falsifies any information on their application, including renewals. You must also receive verification of supervision from the Board prior to beginning work as a PA. Just sending in the application is not enough. Make sure you have received this verification before you see patients! This applies to new PAs and those already licensed

who change supervising physicians.

Many problems that arise for PAs would have been avoided through better understanding of the statutes and rules, so please become more familiar with them.

I invite all PAs in the State to attend a Board meeting. Observing a meeting may help you avoid committing violations that may place you under investigation.

- PA Tuttle works for a medical practice in Safford, Arizona and chairs the Arizona Regulatory Board of Physician Assistants.



## El Blog de Honduras, Verano 2006, by Patrick Connell, M.D., FACEP

I arrived in Roatan, Honduras, on June 24<sup>th</sup>, a humid intermittently rainy day, the dripping wet humidity a great contrast to the dry oven of Arizona. They say that it is dry season here. But it rains nearly every day. The rain is actually a welcome respite from the heat. And I love to hear the patter of the tropical rains coming in waves drumming softly on the mango tree leaves outside my window.

My lodging is an apartment on the top floor of a sturdy appearing three story wooden building in Sandy Bay. I have hot water, cable TV, a window a/c unit in the bedroom, and a kitchen. What more could one ask for?

This is my fourth trip here in the past year, so the first day is spent unpacking, jawboning with old friends, and talking to our leader and the founder of Clinica Esperanza, Ms. Peggy. Ms. Peggy is a "retired" American nurse who moved here some years ago, and soon found herself running an informal clinic in her kitchen. People had heard that there was an American nurse in the area. And with few options for any sort of medical care, the poor and underserved showed up at her doorstep.

Clinica Esperanza is now housed in four rooms donated by the "Son Rise" missionary hotel, a crowded and makeshift operation, but better by far than Ms. Peggy's kitchen. One room is the pharmacy, one is the patient exam room, one is the dentist's treatment room, and the last is for patient triage and storage of supplies. The clinic sees approximately 40 patients a day. The price of the visit is 20 lempiras, approximately one dollar US, and includes the doctor visit, any procedures, and medications.

June 26<sup>th</sup> is my first day working in the clinic. It is Monday, always a long line of patients waiting on the porch of the clinic at 8:00am when we arrive. The a/c is run-

ning in the exam room—makes the day much more tolerable.

Dr. Raymond is the local Honduran doctor who works full time in the clinic. He is paid \$1,500 a month. He is young, recently trained, and has not lost his compassion and intensity for helping people. But working in this environment can beat you down if you let it. The main issues are trying to deal with serious medical issues in the context of few resources, lack of patient and community education, and the numbers of people who need help.

Many of our patients are here for chronic illnesses such as hypertension and adult onset diabetes mellitus. Others come here for coughs, colds, rashes, diarrhea, fevers, and the common maladies of any primary care setting.

Of course in this arena, we are dealing with malaria and dengue fever as well as the common viral illnesses that plague humanity. And then there are the waterborne illnesses such as giardia, amoebiasis, shigellosis, as well as the parasitic maladies such as Ascaris—the intestinal roundworm.



The first week I was here, a ten month old child died from an intestinal obstruction due to the roundworm. The child essentially had a belly full of worms which obstruct the small diameter intestine of an infant. The intestine perforates, and the child dies of peritonitis, a massive intra-abdominal infection. There was no surgeon available for this child. She was transported to La Cieba but died in the hospital

there we are told. An unnecessary and tragic death from poor hygiene, lack of clean water, and lack of prompt specialty medical care.

At Clinica Esperanza, we are two doctors working in one exam room probably 8 x 10 ft. in size. There is one exam table which we share. The shelves are lined with a somewhat disorderly array of mostly donated supplies brought here by volunteers from the States and Canada.

During my first week here, I spent two days working in the pediatric clinic of the municipal hospital in Coxen Hole. There is no running water in the hospital. There are no toilets; there is no sewer or septic system. The Honduran government through the Ministry of Health has the responsibility for medical care of the country's citizens.

But the needs are enormous and the funding is miniscule. And so that leaves the few who can afford to pay, the option of a private clinic. And the rest frequently do without care, even for very significant problems.

For example, I saw a three year old child this week in clinic with a serious congenital heart defect. I suspect that it is a ventricular septal defect based on her physical exam. We can't get an echocardiogram here. I have only my eyes and ears and hands to make a diagnosis for the most part. But this child could not run or play. She is in early heart failure due to the fact that she has a large hole in her heart that has overwhelmed her heart's ability to pump. It is sort of like trying to fill a glass with water when there is a big hole in the bottom of the glass. This family cannot afford to get private care in Tegucigalpa, the country's capital. They can't even afford to travel to Tegus. So what are we to do? Maybe we can get some funding from the



Dr. Connell and staff at Clinica Angelica, a second clinic he and two American nurses established last year in a more remote location in Honduras.

*"The clinic sees approximately 40 patients a day. The price of the visit is 20 lempiras, approximately one dollar US, and includes the doctor visit, any procedures, and medications."*

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## El Blog de Honduras

(Continued from page 6)

States for her to have the necessary diagnostic tests and surgery done in the US.

And then there was the ten month old who came to the clinic 2 days ago with paralysis of her right arm and leg which had begun 2 months prior!!! She has a dense right hemiparesis—essentially a stroke! Does she have a brain tumor? Does she have a subdural hematoma? A vascular malformation? It has been going on for 2 months without treatment. She needs a CT scan, a pediatric neurologist, and probably a neurosurgeon. There is no CT scanner here or the needed specialty care. And she needs these in the second poorest country in the Western Hemisphere. Dr. Raymond will try to beg a CT scan from someone on the mainland and we can go from there. More to come.



*Dr. Patrick Connell is a physician member of the Arizona Medical Board. He is Board-certified in Emergency Medicine. When not in Honduras, Dr. Connell works part time in the Pediatric Emergency Department at Maricopa Medical Center in Phoenix.*

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## Clinica Angelica

Plans to convert Clinica Angelica into a hospital for birthing mothers and inpatient treatment of children appear to be moving forward. After some recent fundraising efforts in Honduras, Dr. Connell reports that they may have about half the money needed.

Tax-deductible contributions can be made to Live2Give, a 5013c non-profit corporation. Donations can be unspecified or earmarked for a particular project in Honduras.

The address:

Live2Give

7000 N. 16th St., Suite 120

Phoenix, AZ 85020

## New Physician Renewal Form, by Suzann Grabe

Recent changes to the Arizona Medical Board (Board) renewal form were implemented in June. Changes include the rephrasing of some questions and the addition of others in order to elicit more complete information. There are now two pages with questions, along with the address page where you can make any changes regarding your home, office or mailing addresses, phone numbers and e-mail.

American Board of Medical Specialties (ABMS) Certifications are verified at time of licensure only. The Board lists these certifica-

tions on your profile page for your benefit. Therefore, we ask that you provide the Board with the status of any ABMS certification by indicating "Lifetime" or expiration date and your initials. If this section is not completed, previously listed ABMS certifications will be removed from your profile page on the Web site.

- Be sure to read the instructions carefully.
- Update addresses.
- Check to be sure that all questions are answered.
- Attach any documentation requested for "yes" answers.

- Sign and date wherever required.

If you skip a question, or forget to sign and date the form, or fail to send payment, your renewal will be returned to you as "deficient" along with a \$25.00 charge to reprocess the application.

If you have any questions, please call Marie Slaughter, Renewals Coordinator at 480-551-2761 or e-mail her at [mslaughter@azmd.gov](mailto:mslaughter@azmd.gov).

*Suzann Grabe is the Manager of the Arizona Medical Board Licensing Office.*



## Recent AMB and ARBoPA Actions and Orders

The Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants have legal authority to revoke, suspend, restrict, fine, reprimand or censure, require monitoring or additional education, or impose other remedial measures on the license of an allopathic physician (M.D.) or PA if the licensee has committed unprofessional conduct or is mentally or physically unable to safely engage in the practice of medicine.

The Boards have recently taken the following actions:

### AMB

#### Lance A. May, M.D.

(Puyallup, WA—Internal Medicine)

AZ License No. 34267

Revocation—Violating any state or federal laws; committing a felony; action taken by another regulatory jurisdiction; sanctions imposed by the Federal Government; procuring a license by fraud. (July 17, 2006)

#### Walter L. Jacobs, M.D.

(Scottsdale—General Practice)

AZ License No. 3829

Revocation—Habitual intemperance; using controlled substances not prescribed by another physician; prescribing controlled substances for other than

a therapeutic purpose. (July 17, 2006)

#### Bruce Hunter, M.D.

(Show Low)

AZ License No. 24075

Revocation—Conduct that is harmful or dangerous to the public; prescribing without establishing a doctor-patient relationship. (July 17, 2006)

#### Kevin G. Hoffert, M.D.

(Mesa—Psychiatry)

AZ License No. 13766

Request for Inactivation with Cause and Order Inactivating License with Cause (July 12, 2006)

#### Michael S. Biscoe, M.D.

(Apache Junction—Internal Medicine)

AZ License No. 20915

License Reactivation and 5 years Probation. (June 9, 2006)

#### Mary Ethelynne Groves, M.D.

(Chandler—Family Practice)

AZ License No. 30315

Suspension of license until physician applies to the Board and shows she is physically able to safely engage in the

practice of medicine.

Decree of Censure for failure to appropriately close her practice and distribute medical records to patients, failure to make reasonable accommodations for medical records, and failure to retain records for the time required by law. (June 9, 2006)

#### Richard Carino, M.D.

(Port Richey, FL—Family Practice/Pain Medicine)

AZ License No. 25808

Summary Suspension of License pending a formal hearing. (June 9, 2006)

#### Bradley A. Schwartz, M.D.

(Tucson—Ophthalmology)

AZ License No. 26807

Revocation-Felony Conviction of Murder. (May 30, 2006)

#### Melanie K. Kohout, M.D.

(Mesa—Psychiatry)

AZ License No. 23105

Inactive with Cause—Drug/Alcohol Use (May 25, 2006)

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## Explanation of Terms

**Revocation** — Termination of a licensee's right to practice medicine or perform health care tasks in Arizona. A referral to a formal hearing is necessary.

**Suspension** — The Board may suspend a license for 12 months or less without a formal hearing. A suspension of more than 12 months may be issued after a formal hearing. A suspension may be used as a punishment to restrict financial gain.

**Decree of Censure** — Not defined in statute, but is identified as an "official action against the license..." A Decree of Censure may be issued by itself or in conjunction with terms of probation. A Decree of Censure may also include a requirement that restitution be paid to a patient.

**Consent Agreement** — An agreement between the Board and a licensee to resolve a case with either a disciplinary or rehabilitative action. Once a consent agreement has been reached, the licensee cannot appeal.



## Recent AMB and ARBoPA Actions and Orders

(Continued from page 8)

### H. Lee Mitchell III, M.D.

(Mesa—Psychiatry)

AZ License No. 30004

Summary Suspension of license pending a Formal Hearing. (April 21, 2006)

### Dale W. Struble, M.D.

(Phoenix—Internal Medicine)

AZ License No. 34790

Surrender of Active License.

(April 7, 2006)

### William E. Mora, M.D.

(Phoenix—Plastic Surgery)

AZ License No. 13088

Referred to Formal Hearing.

(April 5-6, 2006 Board Meeting)

## AMB Stats

At its April 2006 meeting, the Arizona Medical Board approved:

- 2 Surrenders of Active License
- 2 Summary Suspensions
- 3 Referrals to Formal Hearing

- 2 Practice Restrictions
- 2 Probations with MAP Terms
- 5 Decrees of Censure
- 6 Letters of Reprimand
- 18 Advisory Letters
- 3 Dismissals
- 1 Continuance for further investigation
- 1 Motion for Rehearing Denied
- 1 Invited for Formal Interview at a future Board meeting
- 7 Board-approved Consent Agreements

At its June 2006 meeting, the Arizona Medical Board approved:

- 3 Revocations
- 1 Suspension
- 4 Probations with MAP terms
- 1 Decree of Censure
- 17 Letters of Reprimand
- 16 Advisory Letters
- 3 Dismissals
- 1 Request for Rehearing Denied
- 2 Dismissals by the Executive Director Upheld

- 2 Denials of Licensure by the Executive Director Upheld
- 1 Referral to Formal Hearing by the Executive Director Upheld
- 1 Motion for Rehearing Denied
- 4 Invitations for Formal Interview at a future Board meeting.
- 12 Board-approved Consent Agreements

## ARBoPA

### Steven J. King, P.A.

(Mesa)

AZ License No. 2697

Referral to Formal Hearing for Revocation for prescribing for and treating patients while he did not have a supervising physician.

## ARBoPa Stats

At its May meeting, the Arizona Regulatory Board of Physician Assistants approved:

- 1 Referral to Formal Hearing for Revocation
- 1 Decree of Censure
- 4 Advisory Letters

## Reasons for Medical Board Actions

Knowing why physicians have come to the attention of the Medical Board may be helpful information to other licensees.

The Board approved Decrees of Censure for physicians who kept inaccurate and poor medical records and the records did not support billing; who engaged in sexual conduct with a current or former patient; and who failed to appropriately close a practice and distribute medical

records to patients.

Board Members approved Letters of Reprimand for performing a wrong site surgery, improper disposal of medical records, failure to report to the Board an arrest for an act of moral turpitude, inappropriate sexual conversations with patients, and failure to refer a patient for a cardiac consultation.

Non-disciplinary Advisory Letters were

issued in cases where doctors failed to document a complex physical exam and for inappropriate billing; for failing to correctly interpret lab results; for failing to address the history of drug abuse and depression for a patient; for inadequate management of a wrist fracture; for failing to fully document the treatment options available; for misreading a CT Scan; and for leaving a sponge in a surgical wound.

## The Waiting Room, by Timothy C. Miller, J.D.

This month's *Waiting Room* article discusses what happens when the Arizona Medical Board or the Arizona Regulatory Board of Physicians Assistants receives a complaint. A complaint is an allegation that a licensee has violated the Medical Practice Act (MPA) or the Physician Assistant Practice Act (PAPA). All complaints must be filed in writing, either over the Internet or through the mail.

When either Board first receives a complaint, staff confirms the Board has jurisdiction. The Boards cannot investigate all complaints, only those over which they have jurisdiction. Complaints about a Licensee's rudeness, for instance, cannot be investigated because rudeness does not violate the MPA or the PAPA.

When the Board has jurisdiction over the complaint, it opens an investigation. The case is assigned to an investigator, and the complainant is notified that the case is opened. The Licensee is also notified there is an open investigation and is provided a copy of the complaint. The Licensee is required to respond, and the investigator subpoenas the medical records and other relevant material.

The medical records and Licensee's responses are sent to a physician to review of the care provided. If the reviewing physician does not find a deviation from the standard of care, the case is dismissed by the Executive Director. The Licensee and the complainant are notified of the dismissal, and the complainant is given 30 days to request a review of the dismissal.

If the reviewing physician discovers a deviation from the standard of care, then a copy of the report is sent to the Licensee for further response. If the response does not change the analysis, the case proceeds for disciplinary or non-disciplinary action.

The Medical Board opens approximately 1,200 cases per year. The average time to complete an investigation is 166 days, but some cases may take longer because of their complexity. The Physician Assistant Board opens 52 cases per year and, on the average, completes an investigation in 110 days.

## MPA, continued

(Continued from page 3)

the Board, especially during licensing and investigations, must be honest and forthright. The failure to cooperate with a Board investigation, the refusal to disclose the method of treatment for any disease, or the violation of a Board order are violations of the MPA.

Sexual conduct may result in a violation of the MPA. For instance, dating a patient within six-months of terminating the physician-patient relationship is prohibited by the MPA. Obviously, sexual misconduct with a patient is always unprofessional conduct and subject to disciplinary action.

The MPA is a compilation of the types of unprofessional conduct. This article captures the general essence of what physicians should avoid. For a comprehensive assessment, the best advice would be to read the statutes, either on the Arizona Medical Board Web site or in the Arizona Medical Board Medical Directory.

*Timothy C. Miller, J.D., is the Executive Director of the Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants.*

## Two New Areas of Unprofessional Conduct

During the 2006 Legislative session, the Arizona Legislature passed two laws that define two new areas of unprofessional conduct for physicians and physician assistants.

The first, House Bill 2786, deals with the problem of abandoned medical records. Every year, the state agencies that regulate health care professionals receive numerous complaints regarding abandoned or unavailable medical records that can create privacy and continuation of care concerns. In response to this problem, the Legislature enacted a law requiring all health care professionals to develop a writ-

ten protocol for the secure storage, transfer and access of patient medical records.

The Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants have modified their initial and renewal application forms to require licensees to certify that they had developed the required protocol. The law makes it an act of unprofessional conduct for a health care professional who fails to implement the required protocol. This new law can be found on the Arizona Legislature Web site at "<http://www.azleg.state.az.us>" by typing in 2786 in the "Bill # Search."

The second, House Bill 2426, makes it an

act of unprofessional conduct for a health care professional to request that a laboratory send its bill through the health care professional, rather than bill the patient or the payor directly. This law requires what is called "direct billing." This law does not apply to tests conducted by the health care professional or by a laboratory operated by the health care professional.

This law can also be found on the Legislature's Web site. Type in "2426" in the "Bill # Search."

Both new laws take effect on September 21, 2006.

## Latest Licensure Figures for Arizona

Number of Licensed Physicians:

18,445

Number of Licensed Physician Assistants

1,500



## Loaded 'Gub' - continued

(Continued from page 4)

the handwriting.

Unreadable handwriting has been a concern for years.

The *Archives of Internal Medicine* published an article in 1997, recognizing that "inadvertent drug substitution occurred in several instances... due to the combination of the physician's illegible handwriting on prescriptions and the pharmacist's misinterpretation of subtle clues, which might have prevented the errors."

A *British Medical Journal* article in 1998 concluded "that doctors, even when asked to be as neat as possible, produce handwriting that is worse than that of other professions."

In 1999, a Texas jury ordered a doctor to pay \$225,000 for an illegible prescription he wrote that led to the death of a 42 year old

angina patient. As reported in *Pub Med Central*, the pharmacist provided the victim with twice the maximum daily dose of Plendil (felodipine), 20 mg, instead of that amount of Isordil (isosorbide dinitrate). A day after taking the overdose of felodipine, the patient suffered a heart attack; he died several days later. The doctor's illegible prescription was the sole reason for the judgment.

The American Medical Association has issued three policies over the past seven years, urging physicians to use direct, computerized order entry systems or at least to print or type medication orders.

*Roger Downey is the Media Relations Officer of the Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants.*

## Next Issue of Primum

Issue # 4 of Primum later this fall will focus on Internet Prescribing.

The Arizona Medical Board has appointed a Subcommittee to draft a Substantive Policy Statement on Internet Prescribing.

The Medical Practice Act prohibits a physician from prescribing medications prior to establishing a doctor-patient relationship.

A.R.S. §32-1401(27)(ss) describes unprofessional conduct as "Prescribing, dispensing or furnishing a prescription medication or a prescription-only device... to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship."

## Attorney General Warning for Seniors

Attorney General Terry Goddard is warning senior citizens to be wary of callers claiming to be with Medicare.

Individuals claiming to represent Medicare have contacted a number of Arizona consumers and have asked for bank account information, as well as other personal identifying information such as date of birth.

A similar scam involves callers claiming to be from the "National Medical Office." The caller tells the intended victim that his or her Medicare care is no longer valid and offers a new Medicare care for a "low-income discount."

Attorney General Goddard offers the following tips to consumers:

- Be wary of callers that say "You must act now" or you lose your benefits.
- Do not give out personal information, such as Social Security number, bank account numbers or credit card num-

bers to anyone you do not know.

- It is against Medicare rules for their callers to ask for bank account numbers or other personal information over the telephone.
- If you receive a call from someone who claims to represent Medicare, ask the person for an address and phone number that you can verify with Medicare.
- Report any suspicious calls to the Attorney General's Office in Phoenix at (602) 542-5763.
- In Tucson, call (520)-628-6504.
- Outside Phoenix and Tucson, call 1-(800)-352-8431.

Consumers can also file complaints online by visiting the Attorney General's Web site at <http://www.azag.gov>.

## Physician Health Program

Help for drug, alcohol and physical problems is available by contacting the Arizona Medical Board's Physician Health Program (PHP).

Physicians who enter the PHP as self-referrals without a complaint filed against them can get help and participate confidentially. Call Kathleen Muller at (480) 551-2716.

*Arizona Medical Board and Arizona  
Regulatory Board of Physician Assistants*

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*The Arizona Medical Board is committed to serving the public through the honest, fair, and judicious licensing and regulation of allopathic physicians (MDs). As it has in the past, the Arizona Medical Board will continue to gain public respect and trust by focusing on the issues that will shape positive healthcare environments.*

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*As the utilization of physician extenders, such as physician assistants, continually increases, the Arizona Regulatory Board of Physician Assistants stays in touch with community needs and implements health care policy reforms to protect the public and provide guidance to its licensees. Within the last few years, the Board has systematically revised its laws and rules to stay ahead of healthcare trends.*